IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.11.2007

CORAM:

THE HONOURABLE MR. JUSTICE S. MANIKUMAR

W.P.No.22601 of 2002

S.Rajendran ... Petitioner

Versus

The District Collector,
Nagercoil, Kanyakumari District. ... Respondents

Writ Petition filed under Article 226 of the Constitution of India praying for a writ of Mandamus, directing the respondent to compute the lease period of five years in respect of quarry in Survey No.10/1, Aloor Village, Kalkulam Taluk, Kanyakumari District, measuring an extent of 0.64.0 hectares.

For Petitioner : Mr.M.Jawahar

For Respondents : Mr.A.Arumugam,
Addl. Government Pleader

O R D E R

The petitioner has sought for a Writ of Mandamus, directing the respondent to compute the lease period of five years in respect of quarry in Survey No.10/1, Aloor Village, Kalkulam Taluk, Kanyakumari District, measuring an extent of 0.64.0 hectares.
2. It is the case of the petitioner that the District Collector, Kanyakumari District, has granted permission to him to quarry stone in Aloor Village in Kalkulam Taluk in P.P.No.1011 in an area measuring 0.64.0 Hectares, which has been classified as a Government Poromboke, vide order, dated 08.10.1998 and the period of lease granted was from 03.11.1997 to 31.03.2002. While the petitioner was quarrying stones in accordance with the rules and in terms of agreement, he received a letter dated 16.08.1999 from the respondent, stating that there were college buildings, situated 100 meters away on the south west side of the quarry site and pieces of stones fall inside the college campus, endangering the life of the students. In the said letter, it is further stated that the Director of Mines and Geology, Nagercoil, had inspected the site and has given a report, recommending to stop quarrying operations. On receipt of the notice, the petitioner submitted his reply, dated 23.08.1999 to the respondent in person and contended that the educational institutions are situated far away from the quarry site and the location of the quarry site is not prohibited under the Tamil Nadu Minor Mineral Concession Rules, 1959 (hereinafter referred to as "the rules"). The petitioner in his reply has further stated that quarrying operations have been undertaken with adequate precautions and the complaint filed against him is motivated.

3. The petitioner has further submitted that without considering his explanation in proper perspective, the respondent, by his order dated 27.02.2000, has cancelled the lease, with effect from

01.03.2001 on the ground that he has violated Rule 36(5)(c) of the rules and covenant 6(ii) of the lease agreement. Aggrieved by the cancellation of the lease, the petitioner has filed W.P.No.5516 of 2000 and pursuant to the interim order granted by this Court in W.M.P.No.8356 of 2000, dated 20.11.2000, the respondent passed an order dated 06.12.2000, permitting the petitioner to quarry in the same land upto 31.03.2002. As per the Gazette Publication, the petitioner is entitled to quarry upto 17.12.2002. The period of lease is for five years and because of the order of cancellation, the petitioner was illegally prevented from engaging himself in quarrying activities for a period of 18 months and 23 days. Though the petitioner has sent a representation to the respondent, requesting him to continue quarrying operations for the remaining period of 18 months and 23 days, the respondent has not passed any orders and therefore, left with no other alternative, the petitioner has preferred the present Writ Petition for the relief as stated above.

4. The District Collector, Kanyakumari District, respondent herein, in his counter affidavit has submitted that the petitioner was granted stone quarry lease in RS.No.10/1, Aloor Village in kalkulam Taluk for a period of five years upto 31.03.2002, in his Office Proceedings, dated 08.10.1997 and the lease deed was executed on 16.12.1997. Complaints were received from the Principal, Sree Ayyappa Women's College, Chunkankadai, stating that blasted stones from the petitioner's quarry are falling on the college building and inside the campus, endangering the life of students. Since quarry operations caused a potential danger to the lives of the students studying in the college, the petitioner was enquired on 20.04.1998 and he had voluntarily given a statement to the effect that he would conduct stone quarry operations without causing any hindrance or danger to the above said college and the students. Thereafter, by order dated 04.05.1998, the petitioner was instructed to act as per the provisions of the Tamil Nadu Minor Mineral Concession Rules and for few months, quarrying operation was done without any complaints.

5. The respondent has further submitted that on 05.07.1999, the Principal, Sree Ayyappa Women's College, Chunkankadai had complained that the blasted stones from the petitioner's quarry had fallen inside the college campus and there was no safety to the students as well as the buildings. According to Rule 36(5)(c) of the rules, the lessee should carryout quarrying operations without any hindrances to the public in the vicinity of the quarrying area. As complaints were often received from the Principal of the above said college, the lessee was issued with a preliminary notice on 16.08.1999 (as per condition 6(11) of the lease agreement) that the license granted to him would be terminated after six months, i.e., from 01.03.2000. Accordingly, the licence granted to him was terminated from 01.03.2000 onwards, as per proceedings, dated 22.02.2000. Against the order of termination of the lease, the petitioner filed W.P.No.5516 of 2000 before this Court and this Court, in W.M.P.No.8356 of 2000, dated 20.11.2000, has granted permission to quarry stones till 31.03.2002.

6. The respondent has further submitted that as per the Gazette Notification, quarry lease was granted for a period from 16.12.1997 to 31.03.2002 and the said lease was terminated in the interest of the public, after giving six months notice, as per the covenant 6(11) of the lease deed. The respondent has further submitted that when the petitioner had accepted the provisions of the Tamil Nadu Minor Mineral Concession Rules/lease conditions and having paid one-time lease amount for the above said period, he is not entitled to seek for extension beyond 31.03.2002. When the quarry lease was terminated only due to the conduct of the petitioner and therefore, cannot seek for extension of lease as a matter of right.
Heard the counsel appearing for the parties and perused the materials available on record.

7. Perusal of the order, dated 22.02.2000, cancelling the quarry lease granted to the petitioner, reveals that the lease was granted for quarrying stones in R.S.No.10/1, measuring 0.64.0 Hectares in Aalur Village, Kalkulam Taluk, for a period from 03.11.1997 to 31.03.2002. The Principal of Sri

Ayyappa Collage in his letters dated 05.07.1999 and 19.07.1999 has stated that the college building and the students feel insecure, because of the quarrying activities undertaken by the petitioner, by using Compressor and requested the authorities to ban such activities. Based on the complaint, the Director of Mines, Nagercoil has inspected the quarry site on 12.08.1999 and found that the the said college is situated just 100 meters away on the south west of the college from the leased hold area and that there were drips found near the college and that there was a feeling of insecurities in the mind of students. The Director of Mines has further observed that when the explosion takes place in the quarrying site, the broken stones and the chips that splashes would cause danger to the students, studying in the college and therefore, taking into consideration the welfare of the students and the building, opined that the quarrying operation should be banned.
8. Pleadings disclose that the quarrying site is located about 100 meters away from the college and apprehending danger to the students, the Principal had made a complaint. Prima facie, the Director has found that the operation of the quarry site, by blasting explosives have caused a threat to the life and property of the students and the college respectively. It is evident from the order of cancellation, dated 22.02.2000 that the petitioner was also given a preliminary notice, dated 16.08.1999 that as per condition 6(ii) of the lease agreement, the lease would be terminated on expiry of six months, i.e, 01.03.2000 and accordingly, it was terminated by proceedings of the District Collector, dated 22.02.2000.

9. As per Rule 36(5)(c) of the Rules, the quarrying permit holder or the lessee shall carryout quarrying operations in a skilful, scientific and systematic manner keeping in view proper safety of the labourers, structure and the public and public works located in that vicinity of the quarrying area and in a manner to preserve the environment and ecology of the area.

10. It is evident that the petitioner was personally enquired by the District Collector on 20.04.1998 and a statement was also obtained from him to the effect that he would operate quarry without causing any
S. MANIKUMAR, J.

skm
hindrance or danger to the students of Sri Iyyappa Collage. Inspite of his undertaking, the petitioner had carried out the quarrying operations, contrary to Rule 36(5)(c), endangering the lives of the students, warranting cancellation. As the conduct of the petitioner has lead to termination of the lease, he is not entitled to seek for extension of the lease period from 31.03.2002. The petitioner has no statutory or legal right to seek for extension of lease beyond 31.03.2002.

11. For the above said reasons, the Writ Petition is dismissed. No costs.

27.11.2007
skm
To
The District Collector,
Nagercoil, Kanyakumari District.

W.P.No.22601 of 2002